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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,569	06/21/2007	Cornelis Kap	207,800	6234
38137 7590 03/10/2010 ABELMAN, FRAYNE & SCHWAB 666 THIRD AVENUE, 10TH FLOOR NEW YORK, NY 10017				
EXAMINER				
PARSLEY, DAVID J				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
03/10/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/591,569

Applicant(s)

KAP, CORNELIS

Examiner

DAVID J. PARSLEY

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2010.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) 10-12 and 21 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9 and 13-20 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 31 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date 8-31-06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ ~~Notice of Informal Patent Application~~
6) ☐ Other: _____

Detailed Action

Preliminary Amendment

1. Entry of applicant's preliminary amendment dated 8-31-06 into the application file is acknowledged.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Election/Restrictions

3. Applicant's election of Group I in the reply filed on 1-22-10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 10-12 and 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1-22-10.

Specification

4. The disclosure is objected to because of the following informalities: the specification does not include a heading corresponding to the Brief Description of the Drawings section.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 and 13-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the cultivation surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9 and 13-20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S.

Patent No. 6,854,209 to Van Horssen et al.

Referring to claim 1, Van Horssen et al. discloses a system for the cultivation/movement of plants, comprising a feed/removal conveyor – at 8,11,12,13 or 3,4,6,9 or 14 or 15 or 16 or 17, extending adjacent the cultivation surface – at 1 or 30 – see figure 1, and means for moving plants from/to the feed/removal conveyor in a direction perpendicular to the direction of movement of the feed/removal conveyor in the cultivation surface, the means comprising a collection conveyor adjoining the feed/removal conveyor - see at any other of 9,11,12,13 or 3,4,6,9 or 14 or 15 or 16 or 17, and a distribution device – at 20,21, the distribution device comprising a fork-like construction – see at 20,21 in figure 1, for picking up/setting down the plant – see figure 1, fixed to a carriage - at 2,16,17, that can be moved between pick up/set down positions for the fork-like construction at the collection conveyor and a set down/pick up position in the cultivation surface – 1 – see figure 1.

Referring to claim 2, Van Horssen et al. further discloses the fork-like construction is designed for engaging a series of plants – see at 20,21 in figure 1.

Referring to claims 3 and 13, Van Horssen et al. further discloses a branch conveyor positioned between the feed/removal conveyor and the collection conveyor - see at any other of 3,4,6,9 or 14 or 15 or 16 or 17.

Referring to claims 4 and 14-15, Van Horssen et al. further discloses the conveyors have a surface for supporting the plants – see at 8,11,12,13 and 3,4,6,9 and 14 and 15 and 16 and 17 in figure 1.

Referring to claims 5 and 16-17, Van Horssen et al. further discloses there is a guide – at 2 and/or 16 and/or 17, for the distribution device extending perpendicularly to the feed/removal conveyor over the cultivation surface – see figure 1.

Referring to claims 6 and 18-19, Van Horssen et al. further discloses the fork-like construction - at 20,21, can be moved with respect to the carriage in a direction parallel to the feed/removal conveyor - see at 18,19 in figure 1.

Referring to claims 7 and 20, Van Horssen et al. further discloses the collection conveyor can be moved in a direction parallel to the feed/removal conveyor - see at 8,11,12,13 and 3,4,6,9 and 14 and 15 and 16 and 17 in figure 1.

Referring to claim 8, Van Horssen et al. further discloses a branch conveyor - see at any other of 3,4,6,9 or 14 or 15 or 16 or 17, that can be moved with the collection conveyor in the direction parallel to the feed/removal conveyor – see figure 1.

Referring to claim 9, Van Horssen et al. further discloses the distribution device can be moved in a direction parallel to the feed/removal conveyor - see at 18-21 in figure 1.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to plant moving/conveying devices in general:

- U.S. Pat. No. 3,717,953 to Kuhn et al. – shows plant conveying device
- U.S. Pat. No. 3,771,258 to Charney – shows plant conveying device
- U.S. Pat. No. 3,824,736 to Davis - shows plant conveying device
- U.S. Pat. No. 4,028,847 to Davis et al. – shows plant conveying device
- U.S. Pat. No. 4,356,664 to Ruthner – shows plant conveying device
- U.S. Pat. No. 4,476,651 to Drury – shows plant conveying device
- U.S. Pat. No. 5,247,761 to Miles et al. - shows plant conveying device
- U.S. Pat. No. 5,394,646 to Sumiyoshi et al. - shows plant conveying device
- U.S. Pat. No. 5,974,733 to Gyory – shows plant conveying device
- U.S. Pat. No. 6,164,537 to Mariani et al. - shows plant conveying device
- U.S. Pat. No. 6,374,537 to Van Wingerden et al. – shows plant conveying device
- U.S. Pub. No. 2004/0237386 to Madsen et al. - shows plant conveying device

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/
Primary Examiner, Art Unit 3643